

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

NINA BENJAMIN,)	
Charging Party,)	CASE NO. 0001009034
)	
v.)	ORDER AFFIRMING AND
)	AMENDING FINAL AGENCY
JERRY ANDERSON, RICHARD and)	DECISION
DARINDA WILLIAMS, d/b/a JOKER'S)	
WILD BAR AND RESTAURANT,)	
Respondents.)	

The above-captioned matter came before the Montana Human Rights Commission (Commission) on March 22, 2002, for consideration of Respondents' appeal from the Final Agency Decision, issued on January 2, 2002, that Respondents Darinda Williams, Jerry Anderson, and Joker's Wild Bar and Restaurant, had illegally discriminated against Charging Party by reason of her gender. Charging Party also cross-appealed the Hearing Examiner's decision in the Final Agency Decision to dismiss Respondent Richard (Dick) Williams, and the omission of Charging Party's health care costs in the final award calculation. Appearing before the Commission were Brian Tipp, attorney for Respondents, and Tim Kelly, attorney for Charging Party.

After consideration of the entire record and the oral arguments of both parties as to the appeal and cross-appeal, the Commission agrees with the Hearing Examiner's conclusion that Respondents Jerry Anderson, Darinda Williams and Joker's Wild Bar and Restaurant did illegally discriminate against Charging Party in her employment by reason of her gender. The Commission also agrees with the Hearing Examiner's conclusion that Respondent Richard (Dick) Williams did not illegally discriminate against Charging Party, and therefore, the Hearing Examiner properly dismissed the claims against Richard Williams. However, the Commission believes that it is appropriate to reduce the monetary relief ordered to reflect what the Commission believes to be the value of Charging Party's emotional distress. The Commission finds the prior award for emotional distress excessive and not supported by the evidence in the record.

The Commission also finds that the Hearing Examiner inadvertently failed to include the amount of \$10,552.00 in health care expenses, as stated in Finding of Fact No. 65 of the Final Agency Decision, in the calculation of the total damages awarded to Charging Party.

A party may appeal from this order by filing a petition for judicial review with the district court no later than thirty (30) days from the service of this order pursuant to § 2-4-701, et. seq., MCA.

IT IS HEREBY ORDERED that the Final Agency Decision, Order No. 1, finding that Respondents Darinda Williams, Jerry Anderson, and Joker's Wild Bar and Restaurant, did illegally discriminate against Charging Party on the basis of gender, and Order No. 5, finding

that Respondent Richard Williams did not discriminate against Charging Party and should be dismissed, are AFFIRMED. It is further ORDERED that the relief calculated in Conclusion of Law No. 4, and as ordered in the Final Agency Decision, Order No. 2, is amended to \$90,404.46 to include 1) the previously omitted sum of \$10,552.00 for total health care expenses; and 2) the reduction, from \$75,000.00 to \$40,000.00, in the sum that Respondent must pay Charging Party for emotional distress. Final Agency Decision Orders No. 3 and 4, regarding affirmative relief as mandated against Jerry Anderson and Darinda Williams, are AFFIRMED in their entirety.

Dated this ____ day of April, 2002.

Gary Hindoien, Chair,
Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the foregoing **ORDER AFFIRMING AND AMENDING FINAL AGENCY DECISION** was served on the following persons by U. S. Mail, postage prepaid on the _____ day of April, 2002.

RICHARD BULEY
TIPP & BULEY
P. O. BOX 3778
MISSOULA, MT 59806-3778

LUCY T. FRANCE
GARLINGTON LOHN & ROBINSON
P. O. BOX 7909
MISSOULA, MT 59807

TIMOTHY KELLY
P. O. BOX 65
EMIGRANT, MT 59027
